

REMARKS

The Office action mailed on 23 October 2003 (Paper No. 7) has been carefully considered. Claims 1 thru 49 are pending in the application.

Claims 1 through 49 are pending. Claims 23, 33 and 34 are being amended by this Amendment.

In the accompanying presentation of the claims and indicated status of those claims, the re-numbering of the claims kindly made by the Examiner, is follows:

Oath/Declaration

The Examiner required a substitute declaration, correctly identifying the citizenship of joint inventor Hermann Sterzinger. Substitute Declarations signed by all inventors, attest to the Austrian citizenship of joint inventor Sterzinger. Those substitute Declarations accompany this Amendment.

Priority

The Examiner has raised a question of priority under 35 U.S.C. § 119(e) and § 120. The reason for this issue is unclear, except that the Examiner asserts that "the identity of the prior application is unclear."

There is no prior application, and the Disclosure Document identified should, pursuant to section 17.06 of the *Manual Patent Examining Procedure*, have been retained by the Office. If a copy of the Disclosure Document has not been placed in the prosecution history, the Examiner is respectfully requested to request a copy of the Disclosure Document, in accordance with the procedures set forth in the *Manual*.

Objection to the Specification

The Examiner requested Applicant to “update the status of the parent application.” The Disclosure Document is simply the evidence of prior invention by Applicant mentioned in the last paragraph of section 17.06 of the *Manual*, and is not itself a patent application. There is no examination or issue of a Disclosure Document. Consequently, Applicant’s reference to the filing and number assigned to the Disclosure Document is not updatable.

The Examiner requested amendment of the specification to incorporate the one phrase found in claims 33 and 34. The specification has been amended accordingly.

Amendment of Claims 23, 33 and 34

Claims 23, 33 and 34 are amended to shift one phrase, and clarify the relation between the frequencies (wavelength) of the data signals and the carrier signals. This conforms to the detailed description beginning with page 11, which contemplates either transmission of data signals via fixed wire or other modes, or transmission of data signals superimposed upon carrier signals in the

radio frequency, microwave and optical wavelength band. These amendments were made necessary by a typographic errors in these claims that mis-placed phrase defining the carrier frequency, and that error was inadvertent.

Rejection of Claims 1-6, 10-18, 22-25 and 29-32 Under 35 U.S.C. § 102(b)

Claims 1-6, 10-18, 22-25 and 29-32 were rejected under 35 U.S.C. § 102(b) as anticipated by Porter U.S. Patent No. 5,774,053. Applicant respectfully traverses this rejection for the following reasons.

First, the Examiner has incorrectly asserted that Porter '053 "teaches a container manager" that contains that exact language of Applicant's claim 1. Despite the thorough reading of Porter '053, the exact language of Applicant's claim 1 is absent. The completeness mandated by 37 C.F.R. §1.104(a)(b) and (c) is not provided by the Examiner's explanation of Porter '053.

Clarification is respectfully requested. By way of example, the Examiner is respectfully requested to explain precisely which portion of Porter '053 teaches "said control state being mounted entirely within and being completely encased by said container during said complete engagement" of "a closed interior while said lid is in complete engagement with said housing." Additionally, the

Examiner is also requested to identify precisely where Porter '053 teaches that any port (48) of Porter '053 accommodates "conduction of transmission of data signals *between* said closed interior and an environment external to said housing." The Examiner's citation of column 6, lines 16-28 of Porter '053 simply discuss an externally mounted "transmitting device 48", which does not

disclose any port accommodating any communication between the closed interior and an environment external to the housing. In fact, transmitting device 48 is clearly shown in Figure 1-4 as mounted external to the "interior". The external mounting of communication assembly 48 by Porter '053 leaves its communication apparatus 48 subject to external tampering without securing the communication apparatus within the closed interior. Moreover, Porter '053 nowhere uses the term "port" to the fine communication apparatus 48, and in effect, the Examiner has mislabeled the structure of Porter '053 in an effort to demonstrate anticipation. Under 35 U.S.C. § 102, it is error to assume that two structures are the same or equivalent simply because they perform the same function. The Federal Circuit has held it error to assume that two structures are the same or equivalent simply because they perform the same function. *Roton Barrier, Inc. v. Stanley Works*, 79 F.3d 1112, 1126-27 (Fed. Cir. 1996); *Pennwalt Corp. v. Durand-Wayland, Inc.*, 833 F.2d 931, 934 (Fed. Cir. 1987) (en banc) ("Pennwalt erroneously argues that, if an accused structure performs the function required by the claim, it is per se structurally equivalent"), *cert. denied*, 485 U.S. 961 (1988). Infringement (or anticipation) is found only if the claimed function is performed by either the same structure (or acts) that the specification describes or else by an equivalent of the structure (or acts). *Texas Instruments Inc. v. United States Int'l Trade Comm'n*, 805 F.2d 1558, 1562, 231 USPQ 833, 834-35 (Fed. Cir. 1986).

Accordingly, this rejection is improper under the all elements rule. Withdrawal of the rejection and allowance of claims 1 through 6, 10 through 18, 22 through 25 and 29 through 32 is respectfully requested.

Claim 13

Independent claim 13 defines, *inter alia*, “a control stage” that is “mounted entirely within said container.” The Examiner neglects to address this feature of claim 13, among other features of claim 13, in the Examiner’s comments on page 8 of Paper No. 7. The Examiner has failed to satisfy the degree of completeness required by 37 C.F.R. § 1.104. The Examiner is therefore, respectfully requested to explain where Porter ‘053:

- teaches a “control stage being mounted entirely within said container.”
- teaches a control stage “complete encased by said container during said complete engagement.”

Absent demonstration of this feature in Porter ‘053 in satisfaction of 37 C.F.R. § 1.104 by identifying the specific elements relied upon to support this rejection, withdrawal of this rejection and allowance of these claims is required.

Claim 29

Claim 29 defines, among other features, an alarm “driven in response to an *unauthorized interruption of said communication via said port.*” Paper No. 7 does not address this feature. Clarification is therefore respectfully requested, and the Examiner is respectfully urged to:

- explain which specific part of Porter ‘053 teaches Applicant’s alarm “driven in

response to an unauthorized interruption” of said communication.

- identify the specific part relied upon in Porter ‘053 to teach the generation of any alarm in response to “interruption of” communication via a port “exposed through said housing to receive data signals.”

Absent clarification, withdrawal of this rejection is required.

Rejection of Claims 7-9, 19-21 and 26-28 Under 35 U.S.C. §103 (a)

Claims 7 through 9, 19 through 21, and 26 through 28 were rejected under 35 U.S.C. §103(a) as rendered obvious, and unpatentable by Porter ‘053. Applicant respectfully traverses this rejection for the following reasons.

First, as earlier noted, Porter ‘053 is devoid of any teaching of either Applicant’s “port” as defined by parent pending claims 1, 13 and 23, or by Applicant’s “control stage” that is, “mounted entirely within” and “complete encased by the container during the complete engagement” as defined by parent claims 1 and 13. Under the all-elements-rule, withdrawal of this rejection is required.

Second, in support of the rejection, the Examiner has simply paraphrased the language of the rejected claims, without bothering to discern that the reference numbers of Porter ‘053 are not associated with the text of Applicant’s claims anywhere within the specification of Porter ‘053.

This impermissible attribution of the language of Applicant's claims to the text of Porter '053 is improper, and fails to consider the requirement under 35 U.S.C. that obviousness is determined on the subject matter of Applicant's invention in its entirety, as defined by the claims, rather by a paraphrase of those claims. Moreover, this explanation of the Examiner's application of particular components of Porter 053 to individual components of the rejected claims, fails to address the cooperation of those features which is spread across two or more paragraphs of each claim. In essence, the application of Porter 053 to the claims is little more than an aggregation of parts that are unrelated in the manner defined by Applicant's claims. This application of Porter 053, by ignoring Applicant's intercooperation between elements of the claims, fails to provide the degree of completeness required by 37 C.F.R. § 1.104(b)(c). Porter 053 does not even use the noun "port" (although other references of record do) and demonstrates no relation between a "port" and either a "closed interior" or a "controller. Simply identifying discrete components of Porter '053, and failing to combine those components in a manner defined by the claims, does not demonstrate obviousness. The rejection is therefore improper, and must be withdrawn.

Third, as previously explained, the mounting of the control stage "entirely within said container" provides a degree of security and resistance to tampering unavailable with Porter '053. In view of this distinction and the advantage flowing therefrom, these claims are patentably distinguishable and allowable over Porter '053.

Rejection of Claims 33-48 under 35 U.S.C. § 103(a)

Claims 33 through 48 were rejected under 35 U.S.C. § 103 as rendered obvious by a proposed combination of Porter '053 modified according to Bates U.S. Patent No. 6,057,779. Applicant respectfully traverses this rejection for the following reasons.

As applied to support the rejection of claims 33 and 34, the Examiner's proposed combination incorporates a geographically selective locking scheme of Bates '779 that is dependent upon a global positioning satellite communications link. The Examiner's discussion of "different frequencies" is irrelevant to the scope of these claims, and ignores the fact that the Examiner's proposed combination lacks Applicant's "alarm driven in response to an unauthorized *interruption of said communication by said port* to broadcast an indication of said unauthorized interruption" as defined by parent claim 29. This feature advantageously preserves the integrity of Applicant's container manager, a feature absent from the Examiner's proposed combination. In view of this distinction and the advantage flowing therefrom, claims 33 and 34 are patentably distinguishable over the proposed combination. Moreover, absent this feature in the proposed combination, there is no *prima facie* showing of obviousness.

Claims 35 through 41 and 47

In the Examiner's proposed combination, communication device 32 of Bates '779 disconnected via a RS-232 cable to lock controller 24, as is explained in column 4, beginning with line 39. This is essential to the implementation of the Examiner's proposed combination with the

TPS received taught by the secondary reference. In contradistinction however, Applicant's "control stage" is "mounted entirely within and" is "completely encased by said container during said complete engagement", a feature neither recognized nor appreciated by the Examiner's proposed combination. In fact, neither the primary nor secondary reference appreciates the enhancement of security attributable to this feature. Absent this, there is neither *prima facie* showing of obviousness nor other basis for maintaining the rejection. Its withdrawal is required.

Moreover, the fact that the primary and secondary references singularly ignore this feature is itself convincing indicia of non-obviousness. Such evidence may not be ignored under 35 U.S.C. § 103. Accordingly, withdrawal of this rejection and allowance of claims 35 through 49 is required.

Rejection of Claim 49 under 35 U.S.C. § 103(a)

Claim 49 was rejected under 35 U.S.C. § 103(a) as rendered obvious, and unpatentable, over a proposed combination of Porter '053 modified according to Bates '779 and Gokcebay U.S. Patent No. 5,254,329. Applicant respectfully traverses this rejection for the following reasons.

Incorporation of Gokcebay '329 to the Examiner's proposed combination ignores the distinctions explained in the foregoing paragraphs, that are included within dependent claim 49. By way of example, Gokcebay '329 depends on externally, wall-mounted axis control point 12, in single, or sequential arrangement with different security levels, to control entry (*see*, column

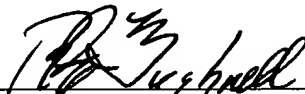
8, beginning with line 58, together with column 5, line 59). This modification of the primary reference includes not only data borne by the key 16, but "includes information specific to the intended key holder." In contradistinction, claim 49 defines a structure that uses "said control stage being mounted entirely within and being completely encased by said container during said complete engagement." In fact, none of the references forming the Examiner's proposed combination either recognizes the advantages of this feature or seek to implement this feature, is convincing indicia of obviousness *vel non*. Accordingly, withdrawal of this rejection is required.

Finally, in response to the objection to the drawings as set forth in PTO-326 of Paper No. 7, corrected substitute formal Figures 9, 12, 13 and 14 in compliance with 37 C.F.R. §1.84 accompany this Amendment. Entry of these formal figures and its entry in writing in the next Office action are respectfully requested.

In view of the above, it is submitted that the claims of this application are in condition for allowance, and early issuance thereof is solicited. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

A petition for a three (3) month extension of time for a **SMALL ENTITY** and an Applicant's check in the amount of \$475.00 drawn to the order of Commissioner accompanies this response. Should the petition become lost, the Commissioner is requested to treat this paragraph as a petition for an extension of time, and should the check become lost, be deficient in payment, or should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

Respectfully submitted,


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